

WRITE A COMMENT Antworten abbrechen

VB verfassungsblog.de/the-ep-2014-elections-constitutional-change-or-window-dressing/

The constitutional expectations developed around the European elections of May 2014 were effectively quite high. Faced with a mounting crisis affecting their output legitimacy, European institutions had to strengthen their status through a different channel. Plausibly, this explains why the idea of enhancing input legitimacy gained ground within the EU and in some Member States' constituencies. The elections of May 2014 (the first run after the introduction of the Lisbon Treaty) provided an ideal platform for giving a political impulse to EU lawmaking. Anticipated by articulated and solid [proposals](#) coming from academic circles and from [European institutions](#), the solution was found through an agreement struck among the main European political parties for nominating a candidate to the President of the European Commission to be supported, in case of victory at the polls, before the European Council. The intuition behind this proposal was based on the idea that once put before the *fait accompli*, the Council could not refuse to ratify the decision of the European Parliament. This novelty was introduced as a two-fold opportunity: first, as a chance for enhancing the representative quality of EU lawmaking and, second, to move the relationship between Parliament and Commission toward a form of parliamentary government.

According to the former point, the proposal intended to inject into the Commission, that is the institution granted the monopoly of legislative initiative, a democratic impulse through a contest for the appointment of its head. In this way, the democratic input would be registered by the Commission and then echoed in the lawmaking process. So, for example, among other things, the indirect election of the President of the Commission was couched in terms of an opportunity to politicise the current Euro-predicament based on the politics of austerity. In this way, EU lawmaking would be influenced by the outcome of the electoral contest. Concerning the second part of the argument, the appointment of the President of the Commission by the European Parliament would create a stronger bond between these two institutions creating the basis for strengthening the political accountability of the Commission vis-à-vis Parliament. The combination of these two outcomes would amount to an informal constitutional change without undergoing the high costs of a Treaty amendment.

In hindsight, it is clear that the European Parliament elections of 2014 did produce [some effects](#), but not those of significant politicisation initially envisaged. The new procedure mobilised five of the European political parties, mostly around well-known [figures](#) and entailed some form of electoral campaigning for the candidates to the Presidency. For example, candidates to the Presidency campaigned around Europe and also participated in televised debates. The purpose was apparently to provide an electoral platform for enhancing public awareness of what was at stake in the EP elections. In this way, linking the appointment of the President of the Commission to the outcome of the electoral process might have endowed the institution with a solid politically representative status. At least from a formal perspective, the experiment seems to have been a clear success. The candidate of the party of relative majority (Jean-Claude Juncker) has been actually proposed by the European Council despite initial resistance from important [quarters](#). He was then elected (this is the language of art. 17 TEU) by the European Parliament. Some [commentators](#) have greeted this appointment as a clever and successful democratic improvement of EU politics promoted by the European Parliament.

Yet, almost one year after the European Parliament elections, the momentum for profound change seems to have (once again) lost part of its force. While it is true that the European Council, after a vibrant campaign led in Germany by prominent figures (starting from, e.g., [Habermas](#)), appointed in the end the candidate put forward by the main parties of the European Parliament, one ought to remark that at the same time, a detailed programme clearly addressed to the new Commission ("[The Strategic Agenda for the Union in Times of Changes](#)" – which set some policy priorities for the EU in the next five years and tasked the forthcoming Commissioners to implement it – was immediately released by the European Council. The agenda setting role which might be proper for a government was shown to be not exercised by the Commission, but at least in its main guidelines by the European Council, as it is stated by Art. 15 TEU. The distribution of posts in the new Commission, the unilateral creation of vice-presidents, all of them pro-austerity, and the first legislative initiatives put forward did not promise to represent a revolution in EU economic policies, marking a relation of continuity with the previous

Commission. Be that as it may, this limited impact of the new Commission in drawing the political trajectory of the Union is not just a case of bad luck or absence of personal competence. It is rather the upshot of a serious misunderstanding. First, the Commission does exercise important executive functions, but it does not embody the governing function of the EU. This function is still clearly in the hands of the European Council. The management of the Euro-crisis, that is, the direction taken in order to cope with it, was firmly established in [European council meetings](#) (sometimes even in an informal way). To stick to the example previously mentioned, in order to contest and possibly overcome austerity policies, the organ to be targeted ought to be the European Council. It is fair to remind ourselves that the Commission is not a marginal institution, but it does not have the political power to change the main trajectory of European politics (and certainly not in the absence of Council's consent).

Another hope of the 2014 elections was to establish a connection between electoral politics and representative lawmaking, which would have produced input legitimacy. But in order to obtain the latter, electoral politics have to take place in an enabling social and institutional context. This is partially missing at the European level. First of all, it is very difficult, given its composition, to find in the Commission a reflection of the political choices as determined by the outcome of the elections. The composition of the Commission is not entirely political as in the sense of partisan politics because, rightly so, it has to accommodate the Member States' presence in the appointment of single Commissioners. A second missing factor is the kind of representative politics staged during the EP elections. A key element of meaningful representative politics is to be able to function as a transmission belt between social conflicts and the political system. Political subjects (parties, trade unions) and institutions (parliaments) able to tackle political conflict ought to play the role of mediation and synthesis between claims coming from society (often from social movements) and the political system. In the absence of certain necessary conditions, opening up the appointment of the Commission President to electoral contest still fails to make a concrete political conflict visible. It is rather a cosmetic operation. In fact, the choice was reduced to a race between political forces advocating austerity *before* growth and those supporting austerity *with* growth. In other words, austerity at degree ten out of ten of intensity and austerity at nine out of ten (that is, with some compassion).

A second key aspect at the basis of the 'transformative reading' of last year's elections has been identified in the role played by the European Parliament as the king-maker of the President of the Commission, ensuring therefore a significant step toward a form of parliamentary government. But this defies constitutional logic. It is not realistic to think that the President of the Commission is accountable to the European electorate even through the mediation of the EP. In the current context, this is extremely difficult to be the case because the European Parliament can certainly dismiss the Commission through a motion of censure (Art. 234 TFEU), but only with a demanding supermajority of two thirds of the cast votes. Historically, no single motion has ever been approved by the assembly (the Santer Commission resigned before it). And, *de facto*, the grand coalition supporting the election of Juncker as president rules out any real possibility of an alternative. Last but not least, it should not be forgotten that in EU lawmaking the main business of Parliament is co-decision. This means that Parliament cannot focus mainly on steering the direction of the Commission nor, obviously, that of the European Council. In this context, Parliament is pushed to reach compromises or agreements with the other institutions involved in EU lawmaking.

Another potential issue created by the *Spitzenkandidaten* experiment (('the best candidates', in this context the candidates selected by the European parties) ought to be reminded here. After the Euro crisis, the Commission has taken up important functions of supervision of the new economic governance. These functions are rigidly determined by a series of [international treaties and pieces of EU law](#) and while several parameters of these measures can be interpreted in a stricter or milder way, their spirit is clear and cannot be easily put into discussion by the Commission itself. It is not clear at all how a more political Commission would be able to reframe important aspects of the new economic governance and how effective this move could be. The governance of the Eurozone is very close to a form of '[intergovernmental legal constitutionalism](#)' which entrenches certain policies by resorting to rules and economic indicators. Political rationality is left at the margin and it applies mostly to the intensity of policies' implementation. Indeed, up to now, the Juncker's Commission has not shown any willingness to challenge other European institutions in the definition of the main parameters of the economic governance.

In the current institutional setting, electing directly or indirectly the President of the Commission is equivalent to providing a pathina of democratic legitimacy to an institution whose function is not to govern the European Union nor to act as a parliamentary chamber, but to police and enforce the fiscal and economic discipline (which is a highly salient issue for representative politics) of the New Economic Governance. The risk is, as already [noted](#), that in such a context a more political Commission might end up as the representative not of European citizens but of the creditor Member States by supervising their budgetary policies. And yet, note that the utterly political decision to sanction those Member States which do not respect the criteria for economic and fiscal convergence is proposed by the Commission but decided, in the end, by the economics and finance ministers in the formation of the Council known as ECOFIN.

Overall, it is difficult to share the enthusiasm for the *Spitzenkandidaten* experiment. In hindsight, this seems to have been an exemplary tale of the limited political capacity of the EU in 2014.

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